Unusable Fingerprint Card Snags Ellsberg Prosecution

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LOS ANGELES, Feb. 22—A retired FBI fingerprint expert testified in federal court here today that he found the fingerprints of Daniel Elleberg and Anthony J. Russo Jr. on a copy of the Pentagon Papers removed from the Rand Corp.

Testifying for the prosecution against Ellsberg and Russo, Deemer E. Hippensteel said that some of the documents also carried the fingerprints of Lynda Resnick, named as an unindicted co-conspirator in the case, and Ellsberg's son, Robert.

Chief Prosecutor David R. Nissen was to rest his case today, after the jury heard from Hippensteel, the last scheduled government witness.

But he was unable to do so when U.S. District Court Judge W. Matt Byrne Jr. refused to permit the FBI expert to testify about finding the fingerprints of Vu Van Thai, a former South Vietnamese ambassador to the United States on the papers.

Although not formally charged in the case, Thai is also named as a co-conspirator in the indictment accusing Ellsberg and Russo of conspiracy, espionage and theft of government property

In order to show that his fingerprints were on the documents, the prosecution must first submit an anthenticated card giving his prints for comparison.

But at least half of the card Nissen submitted on Thai was written in Vietnamese and was signed by an unidentified Saigon police official. Byrne ruled that it did not meet the standards set out in the federal rules of criminal procedure.

(Thai, a longtime friend of Ellsberg, is not available to be fingerprinted here, because he is working as a United Nations development program official in West Africa.)

The judge gave Nissen until Tuesday to come up with a new, verified set of Thai's fingerprints from Saigon. If he does not, Byrne said, two counts in the indictment mentioning Thai may be dismissed.

Defense attorneys have sought to minimize Thai's importance in the case, because they fear that the jury could be prejudiced by any indication that Ellsberg and Russo showed the Pentagon Papers to a foreign citizen. Thai was a consultant to the Rand Corp. at the time of Ellsberg's and Russo's alleged conspiracy.

Meanwhile, Byrne said he would deviate from standard procedure by hearing arguments Friday on a defense motion for a direcected verdict of acquittal in the case, even though all prosecution evidence will not yet have been formally submitted.

He scheduled the opening of the defense case for next Tuesday.

In another development today, Nissen backed down and complied with Byrne's order to provide the defense with material written by a Central Intelligence Agency analyst, Samuel A. Adams.

In memos to his superiors at the CIA over the past three months, Adams contended that American military officials in Vietnam fabricated statistics on Communist troop strength in late 1967 as part of an effort to get more U.S. troops sent into the war.

Those statistics were included in one document covered by the indictment against Ellsberg and Russo. Disclosure of that document, government withnesses said, could hurt the "national defense."

Byrne has ruled that the Adams material may help establish the innocence of Ellsberg and Russo on the charges related to that document, and the CIA analyst is now expected to be a defense witness in the trial.

Nissen initially refused to provide the Adams material to the defense, under orders from Washington, but relented when the Judge threatened to throw still other counts out of the indictment.